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- President Joe Biden

U.S. Issues Chemical Industry Regulation

ARMS CONTROL TODAY

On December 30, the Commerce Department issued regulations specifying procedures for submitting U.S. chemical industry declarations under the Chemical Weapons Convention (CWC), effectively ending over two years of technical U.S. non-compliance with the 1997 treaty. Full U.S. cooperation with the convention's industry provisions, however, is likely to be complicated by several stipulations made by the department that may delay inspections by the Organization for the Prohibition of Chemical Weapons (OPCW), the treaty's implementing body.

The new regulations require civilian U.S. facilities that produce, process, consume, import or export toxic chemicals or precursors covered by the CWC to submit initial declarations of their activities to the Commerce Department by March 30. They must also allow the OPCW to conduct verification activities on their grounds. The declarations will be transferred to the OPCW via the State Department, the "national authority" responsible for coordinating U.S. implementation of the CWC, which issued its own set of regulations dealing with issues such as sample-taking during inspections and enforcement provisions.

The CWC requires states-parties to destroy all their chemical weapons within 10 years and to declare civilian chemical facilities to the OPCW. Chemicals covered by the treaty are divided into three "schedules," based on the relative possibility of their being used in weapons. The United States expects to submit its industry declarations to the OPCW for Schedule 1 (the highest "risk" category) and Schedule 2 facilities by April 28, three years after the convention's entry into force, and inspections are expected to begin in May. It will submit declarations for Schedule 3 facilities and unscheduled-chemicals facilities at a later date.

The regulations' publication was the culmination of years of delay and bureaucratic wrangling between U.S. agencies. Even though initial industry declarations were due by July 1997 (three months after the CWC's entry into force), the Clinton administration failed even to sign national implementing legislation until October 1998. That action was eventually followed up with a June 1999 executive order requiring U.S. agencies to draft implementing regulations. (See ACT, [June 1999](#).) Draft regulations were published in July and issued after comments were received in August.

The long delay in U.S compliance has taken its toll on the OPCW's operations. Expecting U.S. declarations at an earlier date, the OPCW had scheduled industry inspections in the United States for 1999. When it became apparent that these inspections would not occur, the OPCW rescheduled some of them to take place in other countries, generating resentment among other states-parties, who objected to the fact that their chemical industries were subject to more inspections than U.S. facilities.

Problems Persist

The fact that the regulations have cleared the way for industry inspections does not mean OPCW dealings with the United States will now proceed smoothly. Washington plans to send a host team-consisting of officials from the Commerce Department, the FBI and the Defense Threat Reduction Agency-to accompany each OPCW inspection team. The Commerce Department, claiming budget shortfalls and insufficient staffing, is not planning to host nearly as many industry inspections as the OPCW wants to conduct. Furthermore, citing concerns over the protection of commercial proprietary information, the department is not planning to support sequential industry inspections or industry inspections that occur within one week of each other. Also, the department does not intend to host more than one OPCW team at a time.

The Commerce Department has contacted the OPCW on its plans, which threaten to seriously slow the pace of already-delayed U.S. industry inspections and will most likely cause concern by other states-parties that have become frustrated with U.S. implementation practices. The OPCW has made no public comment on U.S. plans.

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